

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060335

ORDER FINDING COMPLAINT
SUFFICIENT IN PART AND
INSUFFICIENT IN PART, AND
GRANTING LEAVE TO AMEND

On May 28, 2015 Student's mother (Parent) filed on behalf of Student a Due Process Hearing Request¹ naming Fairfield-Suisun Unified School District. On June 5, 2015, District filed a "Motion to Dismiss/Notice of Insufficiency."

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges five claims. As discussed below, claims 2-5 are sufficient, and claim 1 is insufficient.

Student alleges that, at the time of the complaint, he was 12 years old and attending sixth grade in the District. The complaint identifies Student’s primary language as American sign language/English and states that his school of residence is located at 4770 Canyon Hills Drive, Fairfield, California. Official notice is taken that this is the address for Cordelia Hills Elementary School.

Problem 1 states that Parent signed documents at a mediation on April 15, 2015, then sought to rescind her signature on April 16, 2015 because District did not show the proposed placement while students were present and “[did not allow] the proposed placement administration to be present, which impeded the registration process.” As resolution, Student requests clarification on why her motion to reinstate was denied. Even reading the complaint as a whole, it is not possible to reasonably interpret these allegations without relying on

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

guesswork or information beyond that which is available from the complaint, which information may or may not be available to District.

Problem 1 therefore does not sufficiently identify the issue and adequate related facts to permit District to respond, and is insufficient. Student shall have leave to amend the complaint as to Problem 1 to state sufficient facts to identify the mediation, registration process, and motion to reinstate at issue, and how they related to District's evaluation, educational placement, or provision of FAPE with respect to Student.

Problem 2 alleges that Student was told on May 22, 2015 that Student could not attend the proposed placement offered by District at mediation on April 15, 2015 because District had not presented proper registration forms for Student at the mediation. Parent requests that Student be transferred. Student's Problem 2 sufficiently identifies the issue and adequate related facts to permit District to respond, and is therefore sufficient.

Problem 3 alleges that Student was locked out of class on May 28, 2015 and told not to return until District presented proper registration forms for Student, which District had not done as of the filing of Student's complaint. As resolution, Parent requests that the District's compromise and release be voided. Problem 2 sufficiently identifies the issue and adequate related facts to permit District to respond, and is therefore sufficient.

Problem 4 alleges that District acted in bad faith during mediation and has not compensated Student for 3 years of inadequate education. As resolution, Student requests compensatory counseling and tutoring, plus travel expenses. Problem 4 sufficiently identifies the issue and adequate related facts to permit District to respond, and is therefore sufficient.

Problem 5 alleges that District has been harassing Parents since April 15, 2015 with phone calls and mail regarding Student's attendance, despite not having officially enrolled Student. As resolution, Student seeks clarification of the April 15, 2015 compromise and release. Student's Problem 5 sufficiently identifies the issue and adequate related facts to permit District to respond, and is therefore sufficient.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

8 Ed. Code, § 56505.

ORDER

1. Problems 2 through 5 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Problem 1 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
4. The amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order; that is, on or before Wednesday, June 24, 2015.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 2 through 5 in Student's complaint.

DATE: June 10, 2015

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.